(1998) 04 OHC CK 0018

In the Orissa High Court

Case No : Original Jurisdiction Case No. 3853 of 1997

Kay Vee Aar Ltd. APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 06-04-1998

Acts Referred:
Orissa Sales Tax Act, 1947 — Section 6, 7

Citation : (1998) 86 CLT 614 : (1998) 2 OLR 539 : (1998) 111 STC 112

Hon'ble Judges : R.K. Patra, J;Pradipta Ray, J

Bench : Division Bench

Advocate : G.N. Padhi, for the Appellant; Additional Standing Counsel and S. Ray, A.S.C. (C.T.), for the Respondent

Final Decision : Allowed

Judgement

Pradipta Ray, J.—The writ petitioner is a company incorporated under the Indian Companies Act, 1956. It was initially registered as a medium scale industrial unit with the Director-General of Technical Development (hereinafter referred to as "D.G.T.D."). It started commercial production on November 30, 1987. Government of India by a Notification No. S.O. 232(E) dated April 2, 1991 enhanced the investment limits in fixed assets in plant and machinery for the purpose of categorising an industry as small-scale industrial unit. By the said notification option was given to the registered medium scale industries falling within the enhanced limit of investment to register themselves as small-scale industrial units or to continue as medium scale unit. In view of the said notification petitioner-company opted for registering itself as a small-scale industry with effect from September 28, 1991. The petitioner-company as a medium scale industry was admitted into the benefit of Industrial Policy Resolution, 1989 (in short, "I.P.R. 1989") and was given exemption from liability to pay sales tax for a period of five years from April 1, 1990. The State Level Empowered Committee constituted under the I.P.R., 1989 in its 5th meeting held on March 20, 1995 recommended that the newly converted small-scale industrial units would be given benefits as admissible to small-scale industrial units for the prescribed period reduced by the period during which incentive was enjoyed as medium scale unit. On March 23, 1995, Joint Director of Industries intimated the aforesaid decision of the State Level Empowered Committee to the General Manager, District Industries Centre, Balasore. In the said intimation it was mentioned that Government Orders in the matter would be communicated to the General Manager, District Industries Centre as and when received. On October 27, 1995 petitioner-company submitted a representation to the Commissioner-cum-Secretary, Industries Department, Government of Orissa requesting him to pass necessary order for giving effect to the decision of the State Level Empowered Committee. In spite of repeated approach no decision was communicated by the State Government. The writ petitioner filed O.J.C. No. 11175/96 before this Court for appropriate direction. On October 14, 1996, said writ application was disposed of with a direction to the Secretary, Industries Department to dispose of the petitioner''s representation within six months from the date of receipt of the order. Thereafter on February 3/4, 1997, Deputy Secretary of the Industries Department intimated the writ petitioner that the State Government had decided not to allow benefits to the writ petitioner as small-scale industrial unit as there was no provision in I.P.R., 1989 for giving sales tax incentives to a medium scale industrial unit downgraded to a small-scale industrial unit. The writ petitioner has filed the present writ application challenging the aforesaid decision of the State Government as communicated by the Deputy Secretary being annexure 3 to the writ application.

2. There is no dispute about the relevant basic facts in this case. It is admitted that the petitioner-company was/is entitled to the incentives given in I.P.R., 1989 as a continuing unit of 1986 Policy. Only question to be determined is whether an industry downgraded from medium scale to small-scale was entitled to the sales tax benefit of I.P.R. 1989 as a small-scale unit or not.

3. Since 1989 the State Government have adopted consistent industrial policies, inter alia, providing several incentives and concessions to newly established industries in the State. Before 1989 such industrial policies were adopted in 1980 and 1986. In the Industrial Policy, 1989 several incentives were allowed to continuing units of 1986 policy meaning any industrial unit where capital investment commenced on or after April 1, 1986 and prior to the effective date (December 1, 1989) and commercial production started on or after April 1, 1986. Part II of I.P.R., 1989 dealt with continuing units of 1986 policy and Part I thereof with new industrial units. Paragraphs 7.2.3 of Part II, I.P.R., 1989 is quoted below :

"7.2.3. Examination/Deferment of sales tax on finished products :

Small-scale continuing units of 1986 policy will be allowed exemption of sales tax on finished products for an additional period of 2 years over and above 5 years allowed in 1986 policy, i.e., in all 7 years. Medium and large-scale continuing units of 1986 policy shall, in lieu of incentive relating to sales tax on finished products under 1986 policy, be allowed such incentive as is applicable to corresponding new industrial units under Part I after the effective date."

After I.P.R., 1989 came into force Finance Department issued a notification being S.R.O. No. 789 dated August 16, 1990 allowing sales tax exemption u/s 6 of the Orissa Sales Tax Act to different categories of industries in consonance with the I.P.R., 1989. Under entry No. 30-FFFF sales tax exemption was granted on sale of finished products of small-scale industrial units set up between August 1, 1980 and April 1, 1986 and starting commercial production on or after April 1, 1986. Such exemption was allowed for a period of 7 years from the effective date.

4. By S.R.O. No. 790/90 dated August 16, 1990, the State Government granted exemption u/s 7 of the Orissa Sales Tax Act to various classes of medium and large scale industrial units. Under item No, 3 of the Schedule continuing medium and large industrial units set up on or after August 1, 1980 where fixed capital investment commenced on or after August 1, 1990 and prior to April 1, 1986 and the units had gone into commercial production after April 1, 1986, such exemption was granted for 7 years for units set up in districts other than Phulbani, Bolangir and Kalahandi from December 1, 1989 or the date of commercial production, whichever was later.

5. As already pointed out the petitioner-company was first admitted into the benefit of I.P.R., 1989 as a medium scale industry as mentioned in Sl. No. 3 of S.R.O. No. 790/90. Subsequently it came within the category of small-scale industry and claimed exemption of sales tax on finished products as mentioned in item No. 30-FFFF of Finance Department Notification No. 789/90 dated August 16, 1990 for a period of 7 years from the effective date (December 1, 1989). The Industries Department refused to admit the benefit on the ground that I.P.R., 1989 did not contain any provision for giving such exemption to a medium scale industries downgraded to small-scale industries. The said reason cannot hold good. Incentives allowed by I.P.R., 1989 have been given on the basis of the category of the industry, i.e., large scale, medium scale or small-scale. An industrial unit of a particular category was entitled to the benefit given to the said category of industries. The moment a medium scale industry became a small-scale industry because of enhancement of investment limit, it became entitled to the benefits conferred by the I.P.R., 1989 on such small-scale industry. The paragraph dealing with small-scale industries became applicable to the writ petitioner since it was registered as a small-scale unit. We do not find any justification or any logic in the contention that there should be a separate provision for a downgraded industry.

6. Registration of an industrial unit as small-scale unit has the purpose of providing such concession and incentives as have been made available from time to time. It also appears that investment limit for such a small-scale industry was enhanced, to bring in more industries within that category. Central Government wanted all those industries to get the incentives, concessions, exemptions or priorities available to them. There is no valid reason for denying the benefit of

exemption granted in favour of small-scale industries. The decision of the State Level Empowered Committee appears to us to be rational and fully justified.

7. We accordingly hold that the writ petitioner was/is entitled to the exemptions of sales tax as available to a small-scale industrial unit for a period of 7 years from the date of commencement of production reduced by the period of enjoyment of benefit as a medium scale industry. The impugned decision of the State Government as communicated by the Deputy Secretary, Industries Department, vide annexure 3 is set aside. The opposite parties are directed to make available to the petitioner-company the benefits of exemption of sales tax as provided in Clause 30-FFFF of the Finance Department Notification S.R.O. No. 789/90 dated August 16, 1990 for a small-scale industry reduced by the period of enjoyment of exemption as medium scale industry.

8. The sales tax authorities are also directed to revise the sales tax assessment orders for the relevant periods after allowing the petitioner-company benefit of sales tax exemption as a small-scale industrial unit.

9. In the writ petition the petitioner-company has claimed that it is a pioneer unit and accordingly entitled to additional benefit. It is not possible for us to determine whether it is a pioneer unit or not. It is open to the petitioner-company to raise such claim before the concerned authorities and if raised, the authorities concerned will consider and decide such claim.

10. Writ petition is allowed as indicated hereinabove.

No order as to costs.

R.K. Patra, J.

11. I agree.

